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ACTION EAP-01

INFO LOG-00 ACDA-17 ACDE-00 AID-00 AMAD-01 CA-02 CIAE-00  
OASY-00 DODE-00 SRPP-00 EB-01 H-01 TEDE-00 INR-00  
IO-08 L-01 ADS-00 M-00 NSAE-00 NSCE-00 ~~EXCISE~~  
OIC-02 PA-01 PRS-01 P-01 SP-00 SSO-00  
STR-01 TRSE-00 USIE-00 PRME-01 DRL-09 G-00

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O 111135Z JUL 95  
FM AMEMBASSY BEIJING  
TO SECSTATE WASHDC IMMEDIATE 1459  
INFO AMCONSUL SHENYANG  
AMCONSUL SHANGHAI  
AMCONSUL HONG KONG  
AMCONSUL GUANGZHOU  
AMCONSUL CHENGDU

DEPARTMENT OF STATE  
 RELEASE  DECLASSIFY  EXCISE  DECLASSIFY  DENY  IN PART

IM/IPS/CR/MR. 5/27/97  
EO Clearances

POIA Exemptions  TS authority to  
PA Exemptions  CLASSIFY as  S or  C Sec.   
 DOWNGRADE TS to  S or  C

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E.O. 12356: DECL: OADR

TAGS: PHUM, CASC (WU, PETER H.), CH

SUBJECT: CHINA'S STATE SECURITY LAW AND THE HARRY WU CASE

1. CONFIDENTIAL - ENTIRE TEXT.

2. SUMMARY. OUR READING OF CHINESE CRIMINAL LAWS GOVERNING STATE SECRETS AND ESPIONAGE INDICATES THAT THE DEATH PENALTY CAN BE IMPOSED FOR EITHER STEALING STATE SECRETS OR ESPIONAGE. IF THE CIRCUMSTANCES ARE ESPECIALLY SERIOUS. [REDACTED]

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[REDACTED] WITHOUT MORE INFORMATION ON THE SPECIFIC CHARGES OR FACTUAL BACKGROUND OF THE CASE, IT WILL BE DIFFICULT TO PREDICT HOW WU'S CASE WILL BE HANDLED, ALTHOUGH WE NOTE THERE HAS BEEN NO

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AUTHORITATIVE ACCUSATION OF "ESPIONAGE" TO DATE. SINCE THE EMBASSY IS NOT QUALIFIED TO OFFER A LEGAL OPINION ON THE APPLICATION OF CHINESE LAW TO WU'S CASE, WE HAVE PROVIDED NAMES OF U.S.-BASED LAW PROFESSORS WITH EXPERTISE ON CHINA WHOM THE DEPARTMENT MAY WISH TO CONTACT FOR ADDITIONAL INFORMATION. END SUMMARY.

STEALING STATE SECRETS VERSUS ESPIONAGE

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3. CHINA'S STATE SECURITY LAW, AS WITH OTHER LAWS IN CHINA, IS BROADLY WORDED. THE IMPLEMENTING RULES ISSUED IN JULY 1994 ARE NOT MUCH BETTER. "ESPIONAGE" IS NOT DEFINED IN THE LAW OR REGULATIONS.



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4. SEPARATELY, CONGEN HONG KONG GRACIOUSLY ASSISTED US BY ASKING LAWYERS RESIDENT THERE ABOUT THE DISTINCTION BETWEEN ESPIONAGE AND STEALING STATE SECRETS. ACCORDING TO ONE OF THEIR SOURCES, WHILE THERE HAS SOME OVERLAP, STEALING STATE SECRETS DID NOT NECESSARILY CONSTITUTE "ESPIONAGE."

DEFINING STATE SECRETS

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5. AS CONFIRMED BY OUR CHINESE LEGAL CONTACT, CHINA'S STATE SECURITY LAW IS PRIMARILY INTENDED TO ADDRESS ACTIONS BY PRC CITIZENS RATHER THAN FOREIGN NATIONALS. TO ILLUSTRATE, THE IMPLEMENTING REGULATIONS UNDER THE STATE SECURITY LAW STATE THAT "IF AN INDIVIDUAL FROM OUTSIDE THE COUNTRY MAY ENDANGER STATE SECURITY, THE MINISTRY OF STATE SECURITY MAY DECIDE THAT HE BE BARRED

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FROM ENTERING." BASED ON OUR READING, CHINESE LAW ON STATE SECURITY MATTERS IS BROAD AND VAGUE. FOR EXAMPLE, "OTHER SABOTAGE ACTIVITIES WHICH ENDANGER STATE SECURITY" UNDER ARTICLE 4 OF THE LAW INCLUDE "FABRICATING OR DISTORTING FACTS, PUBLISHING OR DISSEMINATING WRITTEN OR VERBAL SPEECHES, OR PRODUCING OR PROPAGATING AUDIO AND VIDEO PRODUCTS WHICH ENDANGER STATE SECURITY." ESSENTIALLY THE MINISTRY OF STATE SECURITY AND HIGHER-UPS DECIDE WHAT CONSTITUTES "ENDANGERING STATE SECURITY." IN PREVIOUS CASES, SPEECHES BY CHINESE LEADERS AND INFORMATION ON CHINA'S STRUCTURAL REFORMS WERE CONSIDERED "STATE SECRETS."

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NO OFFICIAL ACCUSATION OF ESPIONAGE

6. WE NOTE THAT, ACCORDING TO THE PEOPLE'S DAILY ARTICLE IN THE JULY 9 EDITION (DATED JULY 8), WHICH CAN BE CONSIDERED AN AUTHORITATIVE SOURCE, WU IS ACCUSED OF "SNEAKING INTO" CHINA UNDER VARIOUS NAMES, ENTERING AREAS AND UNITS CLOSED TO FOREIGNERS, MAKING SECRET INQUIRIES, AND PURCHASING INTELLIGENCE INFORMATION. HE HAS ALSO ACCUSED OF STEALING SECRET DOCUMENTS, TAKING THEM OUT OF THE COUNTRY, AND PROVIDING THEM TO FOREIGN ORGANIZATIONS AND INSTITUTIONS. THERE HAS NO MENTION OF THE WORD "ESPIONAGE" HOWEVER. A XINHUA ENGLISH LANGUAGE REPORT ALSO DATED JULY 8 USED THE WORD "ESPIONAGE" IN DESCRIBING WU'S ACTIONS, BUT NOT IN DETAILING THE LEGAL CHARGES AGAINST HIM.

PENALTIES

7. ACCORDING TO ARTICLE 97 OF CHINA'S CRIMINAL CODE,

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	IO-08	L-01	ADS-00	M-00	NSAE-00	NSCE-00	OCS-06
	OIC-02	PA-01	PRS-01	P-01	SP-00	SSO-00	SS-00
	STR-01	TRSE-00	USIE-00	PRME-01	DRL-09	G-00	/054W

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C O N F I D E N T I A L SECTION 02 OF 02 BEIJING 030387

E.O. 12356: DECL: OADR

TAGS: PHUM, CASC (WU, PETER H.), CH

SUBJECT: CHINA'S STATE SECURITY LAW AND THE HARRY WU CASE

ANYONE WHO COMMITS "ESPIONAGE" OR AIDING AN ENEMY BY  
"STEALING, SECRETLY GATHERING OR PROVIDING INTELLIGENCE  
FOR AN ENEMY" CAN BE SENTENCED TO 10 OR MORE YEARS OR  
LIFE IMPRISONMENT (NOTE: THIS COMES UNDER THE CHAPTER ON  
"COUNTERREVOLUTIONARY CRIMES." END NOTE). IN LESS  
SERIOUS CIRCUMSTANCES, THE SENTENCE SHOULD BE NOT LESS  
THAN 3 OR MORE THAN 10 YEARS. ARTICLE 103 IN THE SAME  
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CHAPTER, HOWEVER, INDICATES SUCH A CRIME MAY BE PUNISHED  
BY DEATH "WHEN THE HARM TO THE STATE AND THE PEOPLE IS  
ESPECIALLY SERIOUS AND THE CIRCUMSTANCES ESPECIALLY  
ODIOUS."

B. UNDER SEPARATE SUPPLEMENTAL REGULATIONS ISSUED BY THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS, THOSE WHO "STEAL, SECRETLY GATHER, PURCHASE THROUGH BRIBERY, OR ILLEGALLY PROVIDE STATE SECRETS" CAN BE SENTENCED TO 5 TO 10 YEARS IMPRISONMENT (NOTE: ACCORDING TO OUR UNDERSTANDING, EACH OF THESE IS A SEPARATE OFFENSE. END NOTE). IN LESS SERIOUS CASES, SENTENCES CAN BE FIVE YEARS OR LESS OR DEPRIVATION OF POLITICAL RIGHTS. IN SERIOUS CASES, OFFENDERS CAN BE SENTENCED TO 10 YEARS OR MORE, LIFE IMPRISONMENT, OR DEATH, IN ADDITION TO DEPRIVATION OF POLITICAL RIGHTS.

9. ARTICLE 186 OF THE CRIMINAL LAW GOVERNS STATE PERSONNEL WHO DISCLOSE STATE SECRETS OR OTHERWISE VIOLATE THE LAW ON STATE SECRETS. THEY CAN BE SENTENCED TO NOT MORE THAN 7 YEARS. FOR NON-STATE PERSONNEL CONVICTED OF THE SAME OFFENSE, "CONSIDERATION IS TO BE GIVEN ACCORDING TO THE CIRCUMSTANCES" TO SENTENCING THEM, IN ACCORDANCE WITH THE PENALTY FOR STATE PERSONNEL.

10. THE PENALTY FOR ILLEGALLY ENTERING CHINA IS A FINE OF 1,000-10,000 RMB (8.4 RMB EQUALS 1 USD), 3 TO 10 DAYS DETENTION AND EXPULSION. WHERE CIRCUMSTANCES ARE "SO SERIOUS AS TO CONSTITUTE CRIMES," THE CASE IS NO LONGER COVERED UNDER THE ENTRY-EXIT REGULATIONS GOVERNING FOREIGNERS.

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11. CONGEN HONG KONG HAS PROVIDED US WITH A COPY OF A FAX FROM HUMAN RIGHTS WATCH/ASIA IN NEW YORK. ACCORDING TO HUMAN RIGHTS WATCH, THE LAST CASE INVOLVING AN AMERICAN CITIZEN ACCUSED OF EITHER STEALING STATE SECRETS OR ESPIONAGE WAS THE 1983 CASE OF HANSON HUANG, WHO WAS SENTENCED TO 15 YEARS. ACCORDING TO CONGEN HONG KONG SOURCES, HUANG SERVED ONLY FIVE YEARS. WITHOUT KNOWING MORE ABOUT THE FACTS OR CHARGES IN THE HUANG CASE, WE CAUTION AGAINST APPLYING HIS EXPERIENCE TO THE WU CASE.

12. [REDACTED]

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WHY WUHAN?

13. AS FOR THE QUESTION OF VENUE, [REDACTED] CONTACT THOUGHT THAT WU WAS TAKEN TO WUHAN BECAUSE THAT MAY HAVE BEEN WHERE HIS ALLEGED OFFENSES WERE COMMITTED. ACCORDING TO CHINESE LAW, THE AREA WHERE THE CRIME TOOK PLACE WOULD BE RESPONSIBLE FOR HANDLING THE CASE. THE FOREIGN MINISTRY PRESS SPOKESMAN ALSO NOTED ON JULY 11 (REPORTED SEPTEL) THAT WU WAS ORIGINALLY FROM WUHAN, WHICH HAS ALSO A FACTOR IN GIVING THAT CITY JURISDICTION.

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14. FOR ADDITIONAL INFORMATION ON CHINESE CRIMINAL LAW, POSSIBLE SOURCES IN THE U.S. INCLUDE PROFESSOR JEROME COHEN AT NYU LAW SCHOOL, WHO DID A TRANSLATION OF CHINA'S CRIMINAL CODE, OR PROFESSOR ~~HANDLE~~ EDWARDS AT COLUMBIA

UNIVERSITY LAW SCHOOL, WHO IS ALSO AN EXPERT ON CHINESE LAW. THESE U.S. PROFESSORS AND OTHERS MAY ALSO BE ABLE TO PROVIDE INSIGHTS GARNERED FROM THE SCORES OF PRC CHINESE STUDENTS WHO HAVE STUDIED AMERICAN LAW IN THE U.S. HALLFORD

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